

hernia, as a result of his employment duties. He stated that he worked both sides of the nursing home helping out his coworkers because they were shorthanded.

On February 2, 2007 the Office informed appellant that the information submitted was insufficient to establish his claim and requested details regarding the employment activities he believed caused or contributed to his alleged condition. The Office advised appellant to submit a medical report which contained a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

In a narrative statement dated January 15, 2007, appellant indicated that his back pain began in 1982, and worsened when he began working at the employing establishment in April 2004. He developed a hernia in his groin in December 2006 as a result of his work activities, which included washing, changing and dressing patients and lifting them into wheelchairs.

Appellant submitted reports from Dr. Michael Hatzakis, a Board-certified physiatrist. In a report dated February 27, 2006, Dr. Hatzakis related appellant's complaints of back pain exacerbated by pulling, lifting and bending at work. On examination, appellant was unable to bend more than 45 degrees in flexion, and had pain to palpation of the paraspinals while lying prone. He had limited range of motion in the hips while lying on his side, and he experienced pain at 10 degrees of hip flexion. Low back hypertension was visible. Based on radiology reports, Dr. Hatzakis noted complete sacralization of the lumbar spine, minimal calcification in the abdominal aorta, and minimal bulging of the nucleus pulposus at C5-6. He diagnosed back pain primarily as a result of severe low back irritation from hip tightness, with likely underlying degenerative disc disease pathology. In follow-up notes dated March 6, 2006, Dr. Hatzakis documented appellant's complaints of significant pain. He opined that appellant's work-related lifting was exacerbating his pain and recommended restricted duty.

Appellant submitted progress notes for the period January 20 through November 9, 2006 from Jonathan L. Wolman, a nurse practitioner, who treated him for chronic lower back, neck and knee pain. He told Mr. Wolman that his pain was greatly exacerbated by lifting and bending at work. Mr. Wolman recommended permanent work restrictions, including lifting no more than 10 pounds.

In progress notes dated October 21, 2005, Ludmila Chumak, a physician's assistant, diagnosed lumbar strain and bilateral knee pain. In notes dated December 28, 2005, Mark Abrams, a nurse practitioner, stated that appellant had been suffering from low back pain for 20 years, and that his condition may be service related.

The record includes numerous nursing notes, including: May 26, 2005 progress notes from Bruce M. Meredith, a registered nurse; October 21, 2005 emergency care visitation notes from Jan Hampti, a licensed vocational nurse; August 3, 2005 and January 5, 2006 urgent care triage notes from Laura J. Rice, a registered nurse; January 5, 2006 progress notes from Eugene A. Jessen, a licensed practical nurse; March 21, 2006 progress notes from Candace Reed, a registered nurse; and October 27, 2006 notes from Sharon Cruea, a registered nurse. The record also contains therapy notes from Michael J. Roelofsen, a physical therapist, for the period

January 23 through 31, 2006. Mr. Roelofsen stated that appellant's work activities, including transferring patients, aggravated his symptoms.

Appellant submitted radiology reports, including reports of: a January 21, 2006 x-ray of the lumbosacral spine; January 24, 2006 x-rays of the cervical and thoracic spine and bilateral knees; a February 2, 2006 x-ray of the ribs; a February 2, 2006 computerized tomography (CT) scan of the lower cervical spine; and a February 9, 2006 CT scan of the thoracic spine. The record also contains February 8, 2006 results of laboratory tests.

By decision dated March 7, 2007, the Office denied appellant's claim on the grounds that there was no medical evidence of record which provided a diagnosed condition that could be connected with the alleged employment factors.

On May 1, 2007 appellant requested reconsideration. In a letter dated June 5, 2007, he stated that he injured his back while assisting a patient during a restroom visit. Appellant indicated that he informed his supervisor of the injury and went to the emergency room for treatment. He did not identify the date of the alleged injury.

Appellant submitted duplicates of documents previously of record and reviewed by the Office. On June 25, 2007 he also submitted copies of consult requests and medical reports that were previously received by the Office, but were subsequently signed by Dr. Bruce Buchanan, a Board-certified internist. These documents included: May 26, 2005 progress notes from Mr. Meredith reflecting appellant's complaints of low back pain; December 28, 2005 progress notes from Mr. Abrams, who assessed chronic low back pain; radiology reports dated January 24 and February 2, 2006; a January 24, 2006 consult request from appellant's physical therapist, Mr. Roelofsen, which provided an assessment of mechanical low back pain and knee arthralgia; a February 27, 2006 report from Dr. Hatzakis; and progress notes for the period January 31 through November 9, 2006 from Mr. Wolman, who provided an assessment of chronic lower back and neck pain.

Appellant submitted: August 3, 2005 progress notes from Dr. Buchanan reflecting an assessment of low back pain; a June 15, 2007 report from Mr. Wolman providing an assessment of lower back pain, neck pain, hip arthralgia and groin pain; a June 16, 2007 duty status report from Mr. Wolman, which contained a diagnosis of lower back pain; and a July 3, 2007 report from Mr. Wolman, which reiterated his assessment of lower back pain, neck pain, hip arthralgia and groin pain.¹

By decision dated June 27, 2007, the Office denied appellant's request for reconsideration, on the grounds that the evidence submitted was insufficient to warrant a merit review.

¹ The Board notes that the record on appeal contains additional evidence which was not before the Office at the time it issued its June 27, 2007 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c). See also *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that an injury was sustained in the performance of duty as alleged,³ and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.⁵ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ The Board has held that the mere diagnosis of pain does not constitute a basis for the payment of compensation.⁸

Additionally, the Board has consistently held that unsigned medical reports are of no probative value⁹ and that any medical evidence upon which the Office relies to resolve an issue must be in writing and signed by a qualified physician.¹⁰ Lay individuals such as physician

² 5 U.S.C. §§ 8101-8193.

³ *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁵ 20 C.F.R. § 10.5(q).

⁶ *Michael R. Shaffer*, 55 ECAB 386 (2004); *see also Solomon Polen*, 51 ECAB 341, 343 (2000).

⁷ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

⁸ *Robert Broome*, 55 ECAB 339, 342 (2004).

⁹ *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁰ *James A. Long*, 40 ECAB 538, 541 (1989).

assistants, nurse practitioners and social workers are not competent to render a medical opinion.¹¹

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹²

ANALYSIS -- ISSUE 1

Appellant has not submitted sufficient medical evidence to establish that he sustained a diagnosed medical condition as a result of employment factors. Thus, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

On February 27, 2006 Dr. Hatzakis related appellant's complaints of back pain, which was allegedly exacerbated by pulling, lifting and bending at work. He stated that appellant was unable to bend more than 45 degrees in flexion; had pain to palpation of the paraspinals while lying prone; had limited range of motion in the hips while lying on his side; and experienced pain at 10 degrees of hip flexion. Low back hypertension was visible. Based on radiology reports, Dr. Hatzakis noted complete sacralization of the lumbar spine, minimal calcification in the abdominal aorta, and minimal bulging of the nucleus pulposus at C5-6. He diagnosed back pain primarily as a result of severe low back irritation from hip tightness, with likely underlying degenerative disc disease pathology. On March 6, 2006 Dr. Hatzakis opined that appellant's work-related lifting was exacerbating his pain and recommended restricted duty. However, he did not provide a definitive diagnosis. The Board has held that pain is a symptom, rather than a condition, and the mere diagnosis of pain does not constitute a basis for the payment of compensation.¹³ Therefore, Dr. Hatzakis' report is of limited probative value.

Appellant submitted progress notes from Mr. Wolman and Mr. Abrams, nurse practitioners; progress notes from Ms. Chumak, a physician's assistant; nursing notes from Mr. Meredith, Ms. Cruera, Ms. Reed and Ms. Rice, registered nurses; emergency care visitation notes from Ms. Hampti, a licensed vocational nurse; progress notes from Mr. Jessen, a licensed practical nurse; and notes from Mr. Roelofsen, a physical therapist. Nurse practitioners, physicians' assistants, nurses, and physical therapists do not qualify as "physicians" under the Act. Therefore, their opinions are of no probative value.¹⁴

Appellant submitted radiology reports and results of laboratory tests. As none of these reports was accompanied by a narrative report from a physician, providing a definitive diagnosis

¹¹ *Janet L. Terry*, 53 ECAB 570 (2002).

¹² *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas*, *supra* note 4.

¹³ *Robert Broome*, *supra* note 8.

¹⁴ Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law."

that was causally related to identified employment factors, they are insufficient to establish appellant's claim.

Appellant expressed his belief that his alleged condition resulted from his employment duties. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁵ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁶ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by work activities is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by his employment, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty causally related to factors of employment.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹⁷ the Office regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁸ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.²⁰ The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for

¹⁵ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁶ *Id.*

¹⁷ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

¹⁸ 20 C.F.R. § 10.606(b)(2).

¹⁹ 20 C.F.R. § 10.607(a).

²⁰ 20 C.F.R. § 10.608(b).

reopening a case.²¹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²²

ANALYSIS -- ISSUE 2

Appellant's May 1, 2007 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

In support of his request for reconsideration, appellant submitted August 3, 2005 progress notes from Dr. Buchanan reflecting an assessment of low back pain. This document does not address the basis for the central issue before the Office, namely whether appellant developed a diagnosed condition as a result of employment activities. The report is therefore irrelevant. Moreover, as Dr. Buchanan's report merely repeats Dr. Hatzakis' diagnosis of pain, which the Office found to be insufficient to establish appellant's claim, it has no evidentiary value and does not constitute a basis for reopening this case.²³ Appellant also submitted copies of consult requests and medical reports that were previously of record, but were subsequently signed by Dr. Buchanan. None of these reports contained a specific diagnosis, but rather reflected assessments of pain. As they are repetitive and irrelevant to the central issue in this case, the reports do not constitute a basis for granting merit review.

Appellant submitted reports dated June 15 and 16, and July 3, 2007, from Mr. Wolman, who reiterated his assessments of lower back pain, neck pain, hip arthralgia and groin pain. These reports merely repeat evidence contained in the record and therefore have no evidentiary value. Duplicates of documents previously of record and reviewed by the Office prior to its March 7, 2007 decision, do not constitute relevant and pertinent new evidence not previously considered by the Office.²⁴ Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his May 1, 2007 request for reconsideration .

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty. The Board further finds that the Office properly

²¹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²² *See Helen E. Paglinawan*, 51 ECAB 591 (2000).

²³ *Id.*

²⁴ *See Susan A. Filkins*, 57 ECAB 630 (2006).

refused to reopen appellant's case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 27 and March 7, 2007 are affirmed.

Issued: May 19, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board